

1 JOSEPH H. HUNT
2 Assistant Attorney General
3 SCOTT G. STEWART
4 Deputy Assistant Attorney General
5 WILLIAM C. PEACHEY
6 Director
7 Office of Immigration Litigation
8 WILLIAM C. SILVIS
9 Assistant Director
10 Office of Immigration Litigation
11 U.S. Department of Justice
12 Box 868, Ben Franklin Station
13 Washington, DC 20442
14 Telephone: (202) 532-4824
15 Fax: (202) 616-8962
16 ADAM L. BRAVERMAN
17 United States Attorney
18 SAMUEL W. BETTWY
19 Assistant U.S. Attorney
20 California Bar No. 94918
21 Office of the U.S. Attorney
22 880 Front Street, Room 6293
23 San Diego, CA 92101-8893
24 619-546-7125
25 619-546-7751 (fax)
26
27
28 *Attorneys for Federal Respondents-
Defendants*

Lee Gelernt*
Judy Rabinovitz*
Anand Balakrishnan*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad St., 18th Floor
New York, NY 10004
T: (212) 549-2660
F: (212) 549-2654
lgelernt@aclu.org
jrabinovitz@aclu.org
abalakrishnan@aclu.org

Bardis Vakili (SBN 247783)
ACLU FOUNDATION OF
SAN DIEGO & IMPERIAL
COUNTIES
P.O. Box 87131
San Diego, CA 92138-7131
T: (619) 398-4485
F: (619) 232-0036
bvakili@aclusandiego.org

Stephen B. Kang (SBN 292280)
Spencer E. Amdur (SBN 320069)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-1198
F: (415) 395-0950
skang@aclu.org
samdur@aclu.org

*Attorneys for Petitioners-
Plaintiffs*
**Admitted Pro Hac Vice*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MS. L, et al.,

Case No. 18cv428 DMS MDD

Petitioners-Plaintiffs,

JOINT STATUS REPORT

VS.

U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT, et
al.,

Respondents-Defendants.

The Court ordered the parties to file a joint status report on February 20, 2019,

in anticipation of the status conference scheduled at 3:00pm PST on February 21, 2019. The parties submit this joint status report in accordance with the Court's instruction.

I. DEFENDANTS' POSITIONS

A. Update on Reunifications

As of February 13, 2019, Defendants have discharged 2,735 of 2,816 possible children of potential class members.¹ See Table 1: Reunification Update. This issue

¹ As explained in the data table below and in prior status reports, Defendants have determined that some children originally counted in this number are not, in fact, children of class members. Defendants continue to report this number to allow for transparency in their data reporting, and to minimize confusion.

1 an increase of 12 discharges reported in Table 1 since the Joint Status Report (JSR)
2 filed on February 6, 2019. All 12 children were discharged under other appropriate
3 circumstances, such as discharges to other appropriate sponsors or discharges of
4 minors who turned 18 years old.
5

6 There are now five children in ORR care proceeding towards reunification or
7 other appropriate discharge. The current status of these five children is as follows:
8

- 9 ▪ One child has a parent who is in the United States, but who is
10 unavailable because the parent is in other federal, state, or local custody
11 (e.g., state criminal detention). Defendants are working to appropriately
12 discharge the child, and to identify any possible barriers to discharge,
13 meeting and conferring with Plaintiffs where appropriate for resolution.
- 14 ▪ Four children have parents presently departed from the United States.
15 The Steering Committee has not yet provided notice of parental intent
16 regarding reunification (or declination of reunification). Defendants are
17 supporting the efforts of the Steering Committee to obtain statements
18 of intent from those parents. Once Defendants receive the notices from
19 the Steering Committee, Defendants will either reunify the children or
20 move them into the TVPRA sponsorship process, consistent with the
21 intent of the parent. The Steering Committee has advised that resolution
22 on four of the five children will be delayed due to unique circumstances.
23
24
25
26
27
28

The current reunification status for the 2,816 children ages 0 through 17 who have been the focus of Defendants' reporting to date is further summarized in Table 1 below. The data in Table 1 reflects approximate numbers on these children maintained by ORR at least as of February 13, 2019. These numbers are dynamic and continue to change as more reunifications, determinations on class membership, and/or discharges occur.²

Table 1: Reunification Update

<u>Description</u>	<u>Phase 1 (Under 5)</u>	<u>Phase 2 (5 and above)</u>	<u>Total</u>
Total number of possible children of potential class members	107	2709	2816
Discharged Children			
Total children discharged from ORR care:	106	2629	2735
<ul style="list-style-type: none"> • Children discharged by being reunified with separated parent 	82	2073	2155
<ul style="list-style-type: none"> • Children discharged under other appropriate circumstances (these include discharges to other sponsors [such as situations where the child's separated parent is not eligible for reunification] or children that turned 18) 	24	556	580

² Please note that ORR's database experienced technical problems and was inaccessible from approximately February 8, 2019 until February 12, 2019. Due to this outage, it is possible that additional reunifications took place since the last JSR, but were not updated in the database in time for this report. The ORR database is now functional again, and the next JSR will include all reunifications to date.

<u>Children in ORR Care, Parent in Class</u>			
1 Children in care where the parent is not eligible for reunification <u>or</u> is not available for discharge at this time:	0	5	5
2 • Parent presently outside the U.S.	0	4	4
3 ○ Steering Committee has advised 4 that resolution will be delayed	0	3	3
5 • Parent presently inside the U.S.	0	1	1
6 ○ Parent in other federal, state, or 7 local custody	0	1	1
8 ○ Parent red flag case review 9 ongoing – safety and well being	0	0	0
<u>Children in ORR Care, Parent out of Class</u>			
10 Children in care where further review shows they were not separated from parents by DHS	1	13	14
11 Children in care where a final determination has been made they cannot be reunified because the parent is unfit or presents a danger to the child	0	18	18
12 Children in care with parent presently departed from the United States whose intent not to reunify has been confirmed by the ACLU	0	39	39
13 Children in care with parent in the United States who has indicated an intent not to reunify	0	5	5

Additional Information Regarding 149 Children Identified in the Previous JSR

19 Table 1 incorporates discharge information relating to the 149 separated
 20 children reported for the first time in the last two JSRs. *See* ECF Nos. 334 and 349.
 21 These children were in ORR care on June 26, 2018, and were all discharged by
 22 October 25, 2018. At the time of discharge:

23

- 24 • 64 children had potential class member parents who departed the United
 25 States. Seven of these 64 children departed the United States with their
 26

1 separated parents. ORR discharged 57 children under other appropriate
2 circumstances. At the request of the Steering Committee, ORR will provide
3 the Steering Committee with the last known contact information for the
4 parents of these 57 children.
5

6 • 73 children had potential class member parents in the United States. ORR
7 reunified 10 of these 73 children with their separated children, and discharged
8 63 under other appropriate circumstances.
9

10 • 11 children had parents who were determined to be excluded from the class
11 due to criminality. However, one parent from this group was later reunified
12 with his separated child.
13

14 • 1 child was found not to have been separated from a parent.
15

16 On February 8, 2019, Defendants provided a spreadsheet to Plaintiffs
17 identifying these 149 children, and providing information available to Defendants
18 about the status of the children and their parents. Other than as noted above,
19 Defendants have not received any follow-up inquiries from Plaintiffs about this data.
20

21 **B. Update on Removed Class Members**

22 The current reunification status of removed class members is set forth in Table
23 2 below. The data presented in this Table 2 reflects approximate numbers maintained
24 by ORR as of at least February 13, 2019. These numbers are dynamic and continue
25 to change as the reunification process moves forward.
26
27
28

Table 2: Reunification of Removed Class Members

<u>REUNIFICATION PROCESS</u>	<u>REPORTING METRIC</u>	<u>NO.</u>	<u>REPORTING PARTY</u>
STARTING POPULATION	Children in ORR care with parents presently departed from the U.S.	43	Defs.
PROCESS 1: Identify & Resolve Safety/Parentage Concerns	Children with no “red flags” for safety or parentage	43	Defs.
PROCESS 2: Establish Contact with Parents in Country of Origin	Children with parent contact information identified	43	Defs.
	Children with no contact issues identified by plaintiff or defendant	43	Defs. & Pls.
	Children with parent contact information provided to ACLU by Government	43	Defs.
PROCESS 3: Determine Parental Intention for Minor	Children for whom ACLU has communicated parental intent for minor:	40	Pls.
	<ul style="list-style-type: none"> • Children whose parents waived reunification 	39	Pls.
	<ul style="list-style-type: none"> • Children whose parents chose reunification in country of origin 	1	Pls.
	<ul style="list-style-type: none"> • Children proceeding outside the reunification plan 	0	Pls.
	Children for whom ACLU has not yet communicated parental intent for minor:	3	Pls.
	<ul style="list-style-type: none"> • Children with voluntary departure orders awaiting execution 	0	Defs.
	<ul style="list-style-type: none"> • Children with parental intent to waive 	0	Defs.

	reunification documented by ORR			
1	• Children whose parents ACLU has been in contact with for 28 or more days without intent determined	0	Pls.	
2	• Children in ORR care with orders of voluntary departure	0	Defs.	
3	• Children in ORR care w/o orders of voluntary departure	1	Defs.	
4	○ Children in ORR care whose immigration cases were dismissed	0	Defs.	
5				
6	PROCESS 4: Resolve Immigration Status of Minors to Allow Reunification	Total children cleared Processes 1-3 with confirmed intent for reunification in country of origin	1	Pls.
7				
8				
9				
10				
11				
12				
13				
14				

15 Separately, Plaintiffs' have requested that the government submit to Plaintiffs
 16 and to the Court a "baseline" total number of removed parents. Counsel for
 17 Defendants has spoken with counsel for Plaintiffs in an effort to better understand
 18 what Plaintiffs are seeking in making this request, and following that discussion,
 19 Defendants are now working with their data team to compile the number that they
 20 understand Plaintiffs to be referring to in requesting a "baseline." Defendants are
 21 reviewing their records and expect to be able to calculate this number in time for the
 22 next status report. Defendants note that since the preliminary injunction was issued
 23 they have regularly updated the Steering Committee regarding the status of departed
 24
 25
 26
 27
 28

1 parents who have children remaining in ORR care, including updates and
 2 explanations about why their calculation of that number has continued to change
 3 over time. Defendants sent the last such update on February 8, 2019, and plan to
 4 send another update later this week.
 5

6 **C. Update Regarding Government's Implementation of Settlement
 7 Agreement**

8 SETTLEMENT 9 PROCESS	DESCRIPTION	NUMBER
10 Election Forms³	Total number of executed election forms received by the Government	11 340 (217 Parents/123 12 Children)⁴
13	• Number who elect to receive settlement procedures	14 185 (119 Parents/66 15 Children)
16	• Number who waive settlement procedures	17 155 (98 Parents/57 18 Children)⁵

19
 20 ³ The number of election forms reported here is the number received by the
 21 Government as of February 13, 2019.

22 ⁴ The number of children's election forms is lower than the number of parent election
 23 forms because in many instances a parent electing settlement procedures submitted
 24 an election form on his or her own behalf or opposing counsel e-mailed requesting
 25 settlement implementation for the entire family, but no separate form was submitted
 on behalf of the child.

26 ⁵ The number of children's waivers is lower because some parents have submitted
 27 waivers only for themselves and some parents who have waived reunification also
 waived settlement procedures and have therefore not provided a form for the child.

1	Interviews	Total number of class members who received interviews	137⁶
2		• Parents who received interviews	71
3		• Children who received interviews	66
4			
5	Decisions	Total number of CFI/RFI decisions issued for parents by USCIS	63⁷
6		• Number of parents determined to establish CF or RF upon review by USCIS	63⁸
7		• Number of parents whose CF or RF finding remains negative upon review by USCIS	0
8			
9		Total number of CFI decisions issued for children by USCIS	73⁹
10			
11			
12			
13			
14			
15			
16			
17			

18 ⁶ Some individuals could not be interviewed because of rare languages; these
 19 individuals were placed in Section 240 proceedings.

20 ⁷ This number is the aggregate of the number of parents whose negative CFI/RFI
 21 determinations were reconsidered, number of parents whose negative CFI/RFI
 22 determination was unchanged, and individuals who were referred to 240 proceedings
 23 without interview because of a rare language. This number excludes 12 cases where
 24 a parent already had an NTA from ICE or was already ordered removed by an IJ
 25 (which are included in the interview totals).

26 ⁸ This number includes parents who received positive CF/RF determinations upon
 27 reconsideration, parents who received a Notice to Appear based on their child's
 28 positive CF determination, and parents who were placed in Section 240 proceedings
 due to a rare language.

29 ⁹ This number is the aggregate of the number of children who received a positive CF

1	• Number of children determined to establish CF by USCIS	73¹⁰
2	• Number of children determined not to establish CF by USCIS	0
3	Removals	Number of class members who have been returned to their country of origin as a result of waiving the settlement procedures
4		95 Parents¹¹
5		
6		
7		
8		
9		
10		
11		
12		
13	D. Children Awaiting Placement.	
14	On February 12, 2019, Plaintiffs provided Defendants a list of 22 children	
15	who Plaintiffs believed were awaiting placement with a sponsor after their parent	
16	waived reunification. On February 16, 2019, Defendants provided Plaintiffs with	
17	information about each of these 22 children. In summary: 8 of those children have	
18	been released to a sponsor; 5 have possible sponsors, but necessary information has	
19		
20		
21		
22	determination, the number of children who received a negative CF determination,	
23	and children who were referred to 240 proceedings without interview because of a	
24	rare language.	
25	¹⁰ This number includes children who received a positive CF determination, children	
26	who received a Notice to Appear as a dependent on their parent's positive CF	
27	determination, and children who were placed in Section 240 proceedings due to a	
28	rare language.	

determination, the number of children who received a negative CF determination, and children who were referred to 240 proceedings without interview because of a rare language.

¹⁰ This number includes children who received a positive CF determination, children who received a Notice to Appear as a dependent on their parent's positive CF determination, and children who were placed in Section 240 proceedings due to a rare language.

¹¹ This number is as of February 9, 2019.

1 not been submitted by those sponsors; 1 has a possible sponsor, but necessary
 2 information has not been received from the consulate; 7 have no sponsor available;
 3 and 1 child was discharged from ORR custody because he turned eighteen.
 4

5 **E. Government Processes, Procedures, and Tracking, for Separations Since
 June 26, 2018.**

6 7 *1. Data Requested by Plaintiffs*

8 Defendants are providing Plaintiffs with a report containing information
 9 regarding families separated since the Court's June 26, 2018 preliminary injunction
 10 order. Defendants have identified 245 new separations of children and parents that
 11 occurred between June 27, 2018 and January 31, 2019, and four cases which require
 12 more time to assess.¹² Even counting these four cases as parent-child separations,
 13 these (249) referrals account for approximately 0.78% of the 31,876 total referrals
 14 ORR received over the same period. Further, of these 249 children, 62 are no longer
 15 in ORR care.
 16

17 Based on the information available to date, in the 245 identified separations
 18 the parent was either excluded from the *Ms. L* class or was separated for a reason
 19 consistent with the Court's preliminary injunction. In some of these cases, the parent
 20
 21
 22
 23

24 ¹² Defendants have excluded from this count of 245 separations a situation in which
 25 DHS encountered a UAC mother, adult father, and their UAC infant child, and in
 26 which the UAC mother and infant were both transferred to ORR together, while the
 27 infant's adult father was transferred to ICE custody. Defendants coordinated with
 28 Plaintiffs' counsel on the disposition of this case.

1 has since become eligible for reunification with their child, and reunification is
2 proceeding under the Court's procedures, as outlined in Table 3 below.

3 Table 3 below sets forth the number of new separations identified, the bases
4 for those separations, and the status of those children who have been discharged
5 from ORR care. Defendants note that the count presented here is accurate as of
6 February 20, 2019, and is based on information known to the Defendants as of that
7 date. This information is, in some cases, different than the information that was
8 known at the time of the actual separation. For instance, some of these 245 cases
9 reflect a situation in which CBP separated a child from an accompanying adult
10 because, based on the information available to CBP at the time of apprehension, and
11 in light of the short period of time in which CBP must make a processing
12 determination, CBP did not have information to indicate that the adult was the parent
13 or legal guardian of the child. However, since the time of apprehension, Defendants
14 have developed additional information that shows that the child was, in fact,
15 separated from his or her parent or legal guardian. As outlined below in Section
16 I.E.2, in that case DHS and ORR would work together to reunify that parent and
17 child under the expedited *Ms. L* reunification process. In light of changes in
18 information known to Defendants as well as factual circumstances regarding the
19 parent and child, any count of separations reflects only a snapshot in time, and is
20 subject to change based on changed or updated information.
21
22
23
24
25
26
27
28

Table 3: New Separations

Description	Total
Total number of possible children separated from their parents and placed in ORR custody between June 26, 2018 and February 5, 2019	249
• Separations verified by DHS and HHS	245
• Separations requiring additional review	4
Basis for Separation	
• Parent criminality, prosecution, gang affiliation, or other law enforcement purpose	225
• Parent health issues/hospitalization	17
• DHS unable to verify familial relationship	3
Total number of children discharged from ORR care (out of the 249 identified above):	62
• Children discharged by being reunified with separated parent	17
• Children discharged under other appropriate circumstances (these include discharges to other sponsors [such as situations where the child's separated parent is not eligible for reunification] or children that turned 18)	45

2. Processes and Procedures

Defendants have met and conferred with counsel for class members as well as counsel for separated children, and have considered all issues raised by counsel in these discussions, as well as issues identified in the course of this litigation, in developing the outline below. The below summary memorializes the processes, procedures, tracking, and communication between the agencies that have been adopted by the agencies since June 26, 2018, in accordance with the requirements of

1 the Court's preliminary injunction order. It also provides an outline of the options
2 for separated parents and children to obtain information and assess their options for
3 reunification. Defendants are willing to meet and confer with Plaintiffs as needed
4 regarding any remaining issues.
5

6 Outline of Processes and Procedures

7

- 8 • DHS initiates separation based on a parent's: 1) criminal history; 2)
9 communicable disease; 3) unfitness or dangerousness (including
10 hospitalizations); or 4) some other criteria that do not automatically exclude
11 the parent from being treated as a *Ms. L.* class member at a later point in time
12 (i.e., referral for criminal prosecution or as a material witness).
13
 - 14 ○ Understanding that initial separations must be made based on the
15 information that is available at the time to those agents encountering an
16 adult and child, DHS will, if appropriate, relay the basis for separation
17 to the adult, or to the adult's attorney, upon request. CBP will not
18 generally provide reasons to the adult if doing so would create a risk to
19 the child's safety or would not otherwise be in the child's best interests,
20 and will not do so in situations in which CBP suspects fraud,
21 smuggling, and/or trafficking.
 - 22 ○ DHS will communicate the basis for separation to HHS, and will, as
23 soon as practicable, provide HHS with available and appropriate
24 information about the reason for the separation (taking into account any
25 restrictions on the sharing of such information). DHS and HHS have
26 designated points of contact to assist HHS in obtaining information
27 about the reasons for the separation. HHS will ensure that information
28 about the separation is communicated to the field so that attorneys
representing the children can obtain information about the separations
from the FFS or case managers.
 - 29 ○ Where separation is based on 1) criminal history, 2) communicable
disease, or 3) a determination of unfitness or dangerousness by DHS,
30 HHS will accept the child and consider reunification under the
31 processes discussed below (either expedited *Ms. L.* procedures or
32 procedures consistent with the TVPRA.).

1 ■ Where separation is based on communicable disease or a
2 determination of unfitness based on hospitalization, HHS will
3 accept the child, and consider reunification under the processes
4 discussed below, consistent with the TVPRA, while remaining
5 cognizant that the parent may become available for reunification
6 pursuant to the expedited *Ms. L* procedures during such period.
7 If a parent completes medical treatment or the communicable
8 disease is resolved while the parent remains in DHS custody,
9 DHS will notify HHS as soon as practicable whether there is a
10 continued basis for separation (either (1) criminal history, or (2)
11 a determination of unfitness or dangerousness by DHS). HHS
12 will notify DHS if it has determined that there is a basis for
13 separation (including a determination of unfitness or
14 dangerousness by HHS). If there is a continued basis for
15 separation, the procedures discussed below will apply. If there is
16 no continued basis for separation, and the child has not already
17 been released consistent with the TVPRA, then DHS will work
18 with HHS to facilitate reunification under the expedited *Ms. L*
19 procedures.

20 ■ Where the separation is based on a transfer to criminal custody
21 for a criminal prosecution or as a material witness, but no other
22 basis for separation has been identified, HHS will accept custody
23 of the child during the course of that parent's criminal custody.
24 When the parent returns to DHS custody, DHS will notify HHS
25 as soon as practicable whether there is a continued basis for
26 separation (i.e., (1) criminal history, (2) communicable disease,
27 or (3) a determination of unfitness or dangerousness by DHS).
28 HHS will notify DHS if it has determined that there is a basis for
 separation including communicable disease or a determination of
 unfitness or dangerousness by HHS. If there is a continued basis
 for separation, the procedures discussed below will apply. If
 there is no continued basis for separation, then DHS will work
 with HHS to facilitate reunification under expedited *Ms. L*
 procedures.

- 1 • For parents who are separated because of: 1) criminal history, 2)
2 communicable disease, or 3) a determination of unfitness or dangerousness by
3 DHS, DHS will make a detention determination for the parent.
4 ○ If the adult is detained, then DHS will work with HHS to facilitate
5 communication between the parent and child for as long as both the
6 parent and child remain in DHS and HHS custody, respectively.
7 ■ A parent who is separated on the basis of criminal history will be
8 excluded from the class (the only exception to this would be if
9 DHS receives information that the original criminal history
10 determination was in error, in which case DHS should take steps
11 to treat the parent as a *Ms. L.* class member and should work with
12 HHS to facilitate reunification). HHS will work toward release
13 of the child with a suitable sponsor consistent with the TVPRA.
14 ● If a parent in this category requests reunification for
15 removal, DHS and HHS will consider such requests on a
16 case by case basis, notwithstanding the fact that the parent
17 remains excluded from the *Ms. L.* class.
18 ■ A parent who is separated on the basis of having a communicable
19 disease and who remains in DHS custody is excluded from the
20 *Ms. L.* class and is not entitled to be reunified with their child so
21 long as the medical condition remains in place, and HHS will
22 work toward release of the child with a suitable sponsor
23 consistent with the TVPRA.
24 ● If DHS becomes aware that the parent no longer has a
25 communicable disease, then DHS will notify and work
26 with HHS to reassess class membership and, if
27 appropriate, facilitate reunification for children not yet
28 released from HHS.
29 ■ A parent who is separated on the basis of unfitness (including
30 hospitalization) or dangerousness and who remains in DHS
31 custody is not entitled to be reunified with their child so long as
32 the factual basis for the original unfitness or dangerousness
33 determination remains in place.
34 ● If DHS becomes aware that such factual basis no longer
35 exists, then DHS will notify and work with HHS to
36 reassess whether reunification is appropriate and, if
37 appropriate, facilitate reunification.

- 1 • If HHS becomes aware that the factual basis for the
2 original unfitness or dangerousness determination no
3 longer exists then HHS will notify and work with DHS to
4 reassess whether reunification is appropriate and, if
5 appropriate, facilitate reunification.
6
7 • If a parent who remains in DHS custody was separated on
8 the basis of unfitness or dangerousness, and DHS
9 determines that the factual basis for the unfitness or
10 dangerousness determination still exists, and the parent is
11 subject to a final order of removal, DHS will determine
12 whether the parent requests to be removed with his or her
13 child. If the parent requests reunification for removal,
14 DHS will notify HHS before the parent is removed. HHS
15 will then determine whether the parent has any fitness or
16 dangerousness issues that preclude reunification for
17 removal. If HHS finds no fitness or dangerousness
18 problem that precludes reunification for removal, then
19 DHS and HHS will facilitate reunification for removal.
20
21 ○ If DHS makes the decision **not** to detain an individual who was
22 originally separated and excluded from the class for 1) criminal history,
23 2) communicable disease, or 3) a determination of unfitness or
24 dangerousness by DHS (or if release of such an individual is ordered
25 by an immigration judge), DHS will communicate this release
26 determination to HHS and will work with HHS to provide information
27 necessary for HHS to determine whether the parent has an issue that
28 requires continued exclusion from the class or would require continued
 separation. If HHS concludes that no such issue requires continued
 separation or class exclusion, then, notwithstanding the fact that the
 parent is excluded from the *Ms. L.* class, HHS will facilitate
 reunification by, in its discretion, applying the expedited *Ms. L.*
 reunification procedures. Otherwise, the child will proceed towards
 release consistent with the TVPRA.

1 II. MS. L. PLAINTIFFS' POSITION

2 1. The Creation of a Centralized Database to Track Further Separations

3 The parties are meeting and conferring on how to addressing continuing
 4 separations. Prior to the shutdown, Plaintiffs sent the government a set of
 5 threshold requirements that an interagency database should meet. Plaintiffs have
 6 asked to see a written proposal by government agencies so as to provide detailed
 7 responses, informed by the views of stakeholders, including groups representing
 8 immigrant children and families. As of Friday, February 15, the government stated
 9 they are in the process of developing a written proposal; Plaintiffs have not yet
 10 received it or had a chance to review it with stakeholders in order to provide
 11 further input.

12 2. Information Regarding Parents Separated from Children After June 26

13 Plaintiffs have requested the government provide a list of parents separated
 14 from their children after June 26 (the date of the PI Order), along with the reasons
 15 why the family was separated in order to ensure this Court's injunction is properly
 16 implemented and assist the reunification of families where it is not. Plaintiffs
 17 requested this information by e-mail to government's counsel on Dec. 6, 2018,
 18 raised the request in the February 6 JSR, and at the February 8 status hearing. The
 19 government indicated it was putting the information together. 2/8/19 Tr. at 12.
 20 Plaintiffs have not yet received the list.

21 C. Steering Committee Progress

22 The Steering Committee has successfully contacted and confirmed the
 23 preferences of nearly all removed parents with respect to reunifications. On
 24 February 8, the government reported that, as of February 2, 49 children with
 25 removed parents remained in ORR custody.¹³ The Committee has delivered

¹³ As discussed at the October 25 Status Conference, in this Joint Status Report

1 preferences for the parents of 45 of those children, and those children are awaiting
 2 either reunification with their parents or placement with sponsors in accordance
 3 with their parents' submitted preferences. For the remaining four children, the
 4 parent of one is seeking to return to the United States under the Settlement
 5 Agreement and the other three are cases where the Steering Committee has advised
 6 the government that additional time will be required due to complex and
 7 individualized circumstances.

8 The status of efforts based on the government's January 28 list of 49
 9 children in ORR custody with removed parents appears in the table immediately
 10 below.¹⁴

11	Removed parents identified by the government to the Steering	49
12	Committee as of 2/2/2019	
13	Parent's final preference has been communicated to the government	45 ¹⁵
14	• Parent has elected reunification in Country of Origin	0
15	• Parent has elected to waive reunification in Country of Origin	45
16	Total number of cases that the Steering Committee has indicated to	3
17	the government should be set aside.	
18	Total number of cases where the parent seeks to return to the U.S.	1
19	under the Settlement Agreement and has thus not yet made an	
	election.	

20 Plaintiffs are reporting a set of detailed numbers based only on the government's
 21 most recent list of children in ORR custody with removed parents.

22
 23 ¹⁴ This table is shortened from the version in past status reports. We have
 24 omitted a breakdown of the 49 removed parents that focuses on how many
 25 separated parents have been contacted. All but two removed parents have been
 26 contacted, which is unchanged from the Feb. 6 status report.

27 ¹⁵ As noted above, for one child, the Steering Committee has determined
 28 that, due to its inability to reach the removed parent, reporting the preference of the
 non-removed parent is appropriate.

1
2
**3. 1. Children Whose Parents Have Submitted Preferences Who
Are Still Detained**

3
4 On February 12, the Steering Committee provided to the government
5 information regarding 22 children who had been in ORR custody for at least five
6 months following the submission of a final reunification election. The government
7 provided detailed information regarding these children on February 16, which the
8 Steering Committee appreciates. Eight of these 22 children have now been
9 discharged to a sponsor; one child turned 18 and was transferred out of ORR care.
10 The Steering Committee will continue to meet and confer with the Government
11 regarding the remaining children.

12 **2. Identifying the Population of Removed Parents**

13 At the November 30 Status Conference, the Court requested the parties to
14 agree upon a baseline of the total number of parents who were removed following
15 separation from their children, so as to provide the Court with a complete
16 accounting of the reunification process. Although the Steering Committee has
17 conferred with the government regarding how to calculate the baseline, the
18 government has not yet provided the proposed baseline to the Steering Committee.

19 With respect to the 149 additional separated children in ORR custody,
20 identified by the government in the December 12 Joint Status Report, the
21 Government has provided initial information to the ACLU and Steering
22 Committee, showing that 64 of these separated children have a parent that was
23 removed from the United States following separation. None of these children
24 remain in ORR custody; however the Steering Committee intends to contact these
25 parents to ensure that their reunification preferences have been satisfied and to
26 identify any parents whose cases counsel may raise with the government as

1 warranting return to the United States to pursue asylum. The government has told
2 the Steering Committee that it will provide contact information for these families
3 later this week.

4

5 **III. *MMM-Dora Plaintiffs' Report Regarding Settlement Implementation***

6

7 The parties continue to work together to implement the settlement agreement
8 approved on November 15, 2018. Counsel for Plaintiffs are providing the
9 government with signed waiver forms as they are received from class members
10 (detained and released). The parties are meeting and conferring on settlement
11 implementation issues as they arise. Since the last status report, the parties met
12 and conferred on a range of issues. The parties are working together to resolve the
13 discrepancy between the number of waiver forms submitted by class counsel and
14 the number of forms reported by the Government. The parties are also working
15 together to identify and resolve settlement issues for the remaining class members
16 who are still in detention but who have not submitted waiver forms. The parties
17 will alert the Court of any issues that require the Court's guidance.
18

19

20

21

22

23

24

25

26

27

28

1 DATED: February 20, 2019

Respectfully submitted,

2 /s/ Lee Gelernt

3 Lee Gelernt*

4 Judy Rabinovitz*

5 Anand Balakrishnan*

6 AMERICAN CIVIL LIBERTIES UNION
7 FOUNDATION

8 125 Broad St., 18th Floor

9 New York, NY 10004

10 T: (212) 549-2660

11 F: (212) 549-2654

12 *lgelernt@aclu.org*

13 *jrabinovitz@aclu.org*

14 *abalakrishnan@aclu.org*

15 Bardis Vakili (SBN 247783)

16 ACLU FOUNDATION OF SAN DIEGO
& IMPERIAL COUNTIES

17 P.O. Box 87131

18 San Diego, CA 92138-7131

19 T: (619) 398-4485

20 F: (619) 232-0036

21 *bvakili@aclusandiego.org*

22 Stephen B. Kang (SBN 292280)

23 Spencer E. Amdur (SBN 320069)

24 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

25 39 Drumm Street

26 San Francisco, CA 94111

27 T: (415) 343-1198

28 F: (415) 395-0950

skang@aclu.org

samdur@aclu.org

25 *Attorneys for Petitioners-Plaintiffs*

26 **Admitted Pro Hac Vice*

1 JOSEPH H. HUNT
2 Assistant Attorney General
3 SCOTT G. STEWART
4 Deputy Assistant Attorney General
5 WILLIAM C. PEACHEY
6 Director
7 WILLIAM C. SILVIS
8 Assistant Director

9
10 /s/ Sarah B. Fabian
11 SARAH B. FABIAN
12 Senior Litigation Counsel
13 NICOLE MURLEY
14 Trial Attorney
15 Office of Immigration Litigation
16 Civil Division
17 U.S. Department of Justice
18 P.O. Box 868, Ben Franklin Station
19 Washington, DC 20044
20 (202) 532-4824
21 (202) 616-8962 (facsimile)
22 sarah.b.fabian@usdoj.gov

23 ADAM L. BRAVERMAN
24 United States Attorney
25 SAMUEL W. BETTWY
26 Assistant U.S. Attorney

27 *Attorneys for Respondents-Defendants*